

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:13-CR-00263-RJC-DCK

USA

v.

SHAKEAM DYRELL BERNABELA
(16)

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ORDER

THIS MATTER is before the Court upon motion of the defendant for compassionate release based on the COVID-19 pandemic under 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, and the Eighth Amendment. (Doc. No. 476).

Section 603(b) of the First Step Act amended § 3582(c)(1)(A), which previously only allowed a court to reduce a term of imprisonment on motion of the Director of the Bureau of Prisons (BOP). Now a court may entertain a motion filed by a defendant: (1) after full exhaustion of all administrative rights to appeal a failure of the BOP to bring a motion on the inmate's behalf; or (2) after the lapse of 30 days from the receipt of such a request by the warden of the facility, whichever is earlier. Here, the defendant cannot obtain relief from this Court when he has not first sought it through the warden at his facility. Therefore, the Court is without authority to consider the merits of his claim. United States v. Raia, 954 F.3d 594, 595 (3d Cir. 2020).

Additionally, the Eighth Amendment does not provide a basis for the defendant's release by this Court. The defendant claims the prison staff at FCI Ashland Camp is showing deliberate indifference to inmates during the COVID-19 pandemic. (Doc. No. 476: Motion at 2). An attack on the execution of a federal sentence must be brought in an action pursuant to 28 U.S.C. § 2241 in the district where an inmate is confined after exhaustion of administrative remedies, United States v. Miller, 871 F.2d 488, 490 (4th Cir. 1989), which in this case is the Eastern District of Kentucky.

IT IS, THEREFORE, ORDERED that the defendant's motion for compassionate release, (Doc. No. 476), is **DENIED** without prejudice.

The Clerk is directed to certify copies of this Order to the defendant, the Federal Defender, the United States Attorney, the United States Marshals Service, and the United States Probation Office.

Signed: September 25, 2020



Robert J. Conrad, Jr.
United States District Judge

